UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

PROGRESS RAIL SERVICES CORPORATION[1]

Employer

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC

Petitioner

Case 13-RC-20271

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[4]

> All full-time and part-time production and maintenance employees, truck drivers, leadmen, inspectors, shipping and receiving employees, and plant clerical employees employed by the Employer at its facility currently located at 175 West Chicago Avenue, East Chicago, Indiana; but excluding all introductory employees, office clerical employees, professional employees, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) found appropriate at the time[5] and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which

commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Steelworkers of America, AFL-CIO, CLC

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994).** Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before March 15, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by March 22, 2000.

DATED March 8, 2000 at Chicago, Illinois.

/s/ Harvey A. Roth
Acting Regional Director, Region 13

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*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.
2/ The arguments advanced by the parties at the hearing and in their briefs have been carefully considered.
3/ The Employer is a corporation engaged in the manufacture, refinishing, and reconditioning of parts for locomotives, including wheel sets, axles, and truck assemblies.
4/ The Petitioner seeks to represent a unit of all full-time and part-time production and maintenance employees, truck drivers, leadmen, inspectors, shipping and receiving employees, and plant clerical employees, but excluding all office clerical employees, professional employees, managers, guards, and supervisors as defined in the Act. The parties stipulated at the hearing to the description of the employee classifications to be included in the unit. Additionally, both parties made clear in their briefs their agreement that "Introductory Employees" — employees in their first ninety days with the employer who are paid through Personnel Staffing, Inc., an employment agency — should be excluded from the unit. At issue, then, is whether the unit should encompass only employees at the Employer's East Chicago, Indiana facility, or should also include employees at its Chicago, Illinois facility.

The Petitioner seeks to represent employees only at the Employer's East Chicago facility and contends that the employees at that facility constitute an appropriate unit for bargaining, while the Employer claims that its East Chicago and Chicago facilities are so functionally integrated that their respective employees properly comprise only a single unit.

Facts

The Employer, a corporation headquartered in Alabama, is engaged in the manufacture, refinishing, and reconditioning of a variety of products for the railroad industry. It operates approximately thirty-three facilities nationwide in at least four operational divisions: a Recycling Division, a Rail and Track Division, a Mechanical Division, and a Locomotive and Transit Products Division.

The Locomotive and Transit Products Division includes at least two facilities in the Chicago area, both of which the Employer purchased from Viking Engineering in August 1998. One facility, located at 175 West Chicago Avenue in East Chicago, Indiana (the "East Chicago works"), reconditions wheel sets, axles, and combos, which are component parts for rail cars and locomotives. The Employer is also in the process of adding a "freight line" to the East Chicago works that will recondition axles and wheel sets for freight cars. There are approximately 131 employees in the proposed unit at the East Chicago works.

The Employer's other Chicago-area facility is located approximately nine miles from the East Chicago works, at 641 East 108th Street in Chicago, Illinois (the "Chicago facility"). The Chicago facility reconditions and re-assembles trucks for locomotives and passenger cars. Approximately thirteen hourly employees work at the Chicago facility in the job classifications contained in the petitioned-for unit. Most of the reconditioned component parts re-assembled at the Chicago facility come from the East Chicago works, which ships approximately twenty percent of its output directory to the Chicago facility; it ships the remainder to other customers of the Employer.

The management personnel stationed at East Chicago, including the General Manager, Human Resources Manager, Controller, Manager Of Engineering, Quality Assurance Manager, and Operations Manager, oversee operations at both Chicago and East Chicago. No management personnel work at the Chicago facility. The Human Resources department at East Chicago promulgates personnel policies for the Chicago facility, hires and approves all discipline and discharges of Chicago employees, and maintains Chicago employees' personnel records.

The Employer's personnel policies are substantially identical in Chicago and East Chicago. New employees at both facilities receive the same information on policies and procedures. The same wage rates, rules and regulations, and work uniform policies apply to employees at both locations. Both locations use the same job classifications, and employees at both locations receive similar training, use similar tools, and have similar work environments, despite the fact that the two facilities produce different end products. There are minor operational differences between the facilities: for example, their shifts start at slightly different times, and East Chicago employees have a paid, twenty-minute lunch break, while Chicago employees have a non-paid, thirty-minute lunch.

In order to facilitate the transfer of products, parts, and raw materials between East Chicago and Chicago, the Employer dispatches two truck drivers from the East Chicago works. One drives an eighteen-wheeler and makes approximately four trips per week between the two facilities, and the other drives a pickup and makes approximately two trips weekly between the facilities. When they travel to the Chicago facility, both drivers generally spend approximately one to two hours there helping to unload. Both drivers also make deliveries elsewhere.

Aside from the interactions of Chicago employees with these two drivers, day-to-day interactions between hourly employees at Chicago and their East Chicago counterparts are limited. A number of employees from both facilities sit on worker-management committees dealing with issues common to the two facilities such as safety. However, most employees in the proposed unit have little or no occasion to travel from one location to the other. None of the six East Chicago employees who testified at the hearing regularly worked at Chicago or had contact with Chicago employees; four testified that they had never been to the Chicago facility, one of whom did not even know the Chicago facility's location. Similarly, Kelly Venegas, the Employer's Human Resources Manager, testified that Chicago shop personnel have no occasion to travel to East Chicago aside from sitting on committees.

Day-to-day supervision of hourly employees in Chicago is the responsibility of Locomotive and Truck Shop Superintendent Frank Rhomberg. Rhomberg works primarily at Chicago; while he frequently uses the office facilities at East Chicago, he does not supervise any East Chicago employees. Similarly, no shop supervisors in East Chicago directly supervise Chicago employees. Rhomberg has no final authority to discharge or discipline employees without Venegas' approval; he does, however, responsibly direct Chicago employees and initiate discipline.

Each location has its own, separate safety incentive program; the safety violations of one plant do not affect the incentives of employees at the other.

When a position opens at one location, the Employer has generally posted an announcement of the opening only at the facility with the vacancy. If the position is not filled either through this posting or through an external advertisement, the vacancy may

be posted at the other facility. Venegas testified that three employees had voluntarily transferred from East Chicago to Chicago since 1993 by responding to such postings; however, each of the six East Chicago employees who testified at the hearing claimed that, despite checking the Employer's bulletin boards daily or at least weekly, he had never seen a posting for a position at Chicago until a week or two before the hearing.

There have been other permanent transfers of employees between locations. Four employees transferred from East Chicago to Chicago between late June and late July of 1999 as part of a reorganization of the Employer's scheduling structure at both facilities. Additionally, three times in the last three years employees have temporarily transferred from one facility to the other to meet temporary staffing needs, including two transfers in December of 1999, one of which became permanent. Employees who transfer from one facility to the other retain their seniority; however, in the event of layoffs employees at one facility cannot "bump" employees with less seniority at the other facility.

Analysis

Petitioner has petitioned to represent a unit consisting of employees only at the East Chicago location. A unit consisting of employees at a single site is presumed to be appropriate absent a showing that the unit "has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity." *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997); *J&L Plate, Inc.*, 310 NLRB 429 (1993). The burden of producing evidence to overcome this presumption rests with the party opposing a single-site unit. *J&L Plate*. The Board examines several factors in determining whether the presumption of the appropriateness of a single unit has been overcome: bargaining history, if any; geographic proximity; centralization of control over operations and labor relations; similarity of skills, functions, and working conditions; extent of employee interchange; local autonomy in ordinary operations; and the local manager's autonomy to supervise employees' day-to-day work;. *Rental Uniform Serv., Inc.*, 330 NLRB No. 44 at 4 (1999).

In the present case, there is no record of any bargaining history involving either the East Chicago or Chicago location. The two facilities are geographically close, separated by only nine miles, and operate under centralized management in East Chicago. Policies, procedures, job classifications, wages, and benefits are uniform across the two facilities. Employees at both facilities work in the same job classifications, use similar skills, and receive similar training. Labor Relations are centralized in East Chicago to the extent that Kelly Venegas retains ultimate responsibility for hiring, firing, and discipline at both locations. These factors mitigate against the appropriateness of a single-site unit in the present case. *Alma Plastics Co.,* 265 NLRB 479 (1982); *U-Wanna-Wash Frocks, Inc.*, 203 NLRB 174 (1973).

However, while the two facilities operate within the same organizational framework, they are nonetheless functionally distinct. The two facilities are engaged in separate manufacturing processes: while East Chicago supports Chicago's truck assembly work by reconditioning component wheels and axles, 80% of East Chicago's work is performed directly for other customers. Chicago is, in effect, another of East Chicago's "customers." While Chicago depends upon East Chicago for administrative support, it could perform the same work with wheels and axles from any similar facility.

The Employer does not treat either facility simply as a "specialized production department" of the other facility. *Alma Plastics Co.*, 265 NLRB 479, 480 (1982). *Cf. Pickering & Co.,* 248 NLRB 772 (1980); *Tungsten Contact Mfg. Co.*, *U-Wanna-Wash*, 203 NLRB 174; *National Connector*, 191 NLRB 675 (1973); 189 NLRB 22 (1971) (multi-facility unit appropriate in cases where separate facilities participated in single production process).

Moreover, the facilities operate independently. There are no seniority "bumping" rights across the two facilities, and safety incentive programs operate independently at the two facilities. There has been some, but very little, transfer of employees between Chicago and East Chicago — fewer than ten in the last three years, in a plant that employees over one hundred people. Moreover, the evidence shows that, aside from the participation of a handful of employees on committees, East Chicago employees have almost no interaction with Chicago employees.

Finally, the Chicago facility is under the supervision of an on-site Superintendent who initiates discipline and has day-to-day supervisory responsibility for Chicago employees. While Venegas' role as Human Resources Manager sharply limits Rhomberg's autonomy in personnel matters, the evidence shows that neither Venegas nor any other East Chicago employee directly supervises Chicago employees on a daily basis. *Cf. Frito-Lay, Inc.*, 202 NLRB 1011 (1973).

In short, the centralized administration of the two facilities, even in basic personnel matters, is outweighed by the East Chicago facility's functional autonomy from Chicago in the manufacturing process, as well as East Chicago employees' independence from their Chicago counterparts. *J&L Plate*, 310 NLRB 429; *Eschenback-Boysa Mgmt. Co.*, 268 NLRB 550 (1984); *Hegins Corp.*, 255 NLRB 1236 (1981); *Penn Color, Inc.*, 249 NLRB 1117 (1980). I find, therefore, that there is insufficient evidence to rebut the presumption that single-site unit at East Chicago is appropriate.

Accordingly, I find that the above-described unit of employees working at the East Chicago works is an appropriate unit.

5/ The Employer contends that the election should be delayed until after it completes a scheduled fifteen to twenty percent expansion of its employee complement. The Petitioner claims that the East Chicago facility currently has a substantial and representative employee complement and, therefore, that an immediate election is appropriate.

Facts

The Employer is currently in the process of expanding the East Chicago works to add a "freight line" that will allow it to work on wheels and axles for freight rail cars. It also intends to add a second shift to its axle line at East Chicago, and intends to hire three new employees to fill vacancies at its Chicago facility, increasing its employee complement from twelve to fifteen. The Employer has already nearly completed remodeling one of its buildings at the East Chicago works to house the freight line, and has begun to advertise for and interview candidates for both the freight line and the second shift of the axle line. It intends to begin production of freight wheels by late March or early April 2000.

In addition to the three employees at Chicago, the Employer expects to hire, within the next month, seven employees for the freight line and thirteen employees for the axle line at East Chicago, increasing its employee complement from 126 to 146. While the freight line employees will be performing different tasks that require different training than other positions at East Chicago, they will be working in the same job classifications at the same wage scale as other East Chicago and Chicago employees. The Employer eventually hopes to hire seven additional employees to add a second shift to the freight line.

While the Employer expects that most of the vacancies on the new freight line will likely be filled with existing employees, it expects to have to hire externally to replace those employees.

Analysis

An immediate election is improper when a bargaining unit is expanding if it would unreasonably disenfranchise a substantial number of eventual employees. *World S. Corp.*, 215 NLRB 287 (1974). The issue in expanding unit cases is "whether the present employee complement is substantial and representative." *Laurel Assocs., Inc.*, 325 NLRB 603 (1998). The Board has not established any specific, numerical criterion for what constitutes a substantial and representative complement, but it has repeatedly approved immediate elections in cases in which the complement at the time of the hearing was significantly less than 80% of its eventual size and in which the employer intended to add new job classifications following the election. *Toto Indus. (Atlanta), Inc.*, 323 NLRB 645 (1997) (60% of prospective employee complement); *Gerlach Meat Co.*, 192 NLRB 559 (1971) (35% of prospective complement in 50% of eventual job classifications); *General Cable Corp.*, 173 NLRB 251 (1968) (31% in 50% of eventual classifications).

In the present case, Chicago currently enjoys 80% of its prospective complement; East Chicago currently employs 86% of its eventual total. The present employee complement at both facilities is therefore substantial. Moreover, the Employer intends to add no new job classifications at either facility; the present complement at both facilities is therefore representative. Given the small increase in employee complement, the fact that the expansion appears imminent and certain is not enough to justify denying the petition.

Because the present employee complement at the Employer's East Chicago works is substantial and representative, I find that an immediate election at that location is appropriate.

177-1650; 370-0750-0700; 370-0750-4200; 440-3300;
440-3350-5000; 440-3350-7500; 440-3375

[5]